

THE INDUSTRIAL RELATIONS CODE, 2020



INTRODUCTION

The Industrial Relations Code, 2020 provides a broader framework to protect the rights of workers to make unions, to reduce the friction between the employers, and workers and to provide regulations for settlement of industrial disputes.

The Code is prepared after amalgamating, simplifying and repealing following 3 central labour acts:

- i. The Trade Unions Act, 1926
- ii. The Industrial Employment (Standing Orders) Act, 1946
- iii. The Industrial Disputes Act, 1947

SCOPE & APPLICABILITY

The Code is designed to consolidate & amend the laws regarding Trade Unions, conditions of employment in Industrial establishment or undertaking, and sleek settlement of industrial disputes. The code regulates the subsequent areas:

- Registration of Trade Union
- Cancellation of Trade Union
- Alteration of Name of Trade Union
- Formation of Work Committee
- Incorporation of a Registered Trade Union
- Recognition of Negotiating Union
- Preparation of Standing Order
- Register of Standing Order
- Constitution of Industrial Tribunal
- Illegal Strikes and Lock-outs
- Procedure for Retrenchment and Re-employment of Retrenched Worker
- Compensation to Workers in case of Transfer of Establishment
- Prohibition of Lay-off
- Closure of an Industrial Establishment

OBJECTIVE

- The Code designated to safeguard the rights of employers and employees by providing easy labour reforms and to facilitate ease of Doing Business.
- The object of the Code is to realize industrial peace and harmony as the ultimate pursuit in resolving industrial disputes and to advance the progress of industry by bringing about the existence of harmony and cordial relationship between the employers and workers.

KEY DEFINITIONS

- Industry means any systematic activity carried on by co-operation between an employer and for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes, whether or not:
 - I. any capital has been invested for the purpose of carrying on such activity
 - II. such activity is carried on with a motive to make any gain or profit, but does not include:
 - III. institutions owned or managed by organizations wholly or substantially engaged in any charitable, social or philanthropic service
 - IV. any activity of the appropriate Government relating to the sovereign functions of the appropriate Government including all the activities carried on by the departments of the Central Government dealing with defense research, atomic energy and space any domestic service.
 - V. any other activity as may be notified by the Central Government.

- **Employer** means a person who employs, whether directly or through any person, or on his behalf or on behalf of any person, one or more employee or worker in his establishment and where the establishment is carried on by any department of the Central Government or the State Government, the authority specified by the head of the department in this behalf or where no authority is so specified, the head of the department, and in relation to an establishment carried on by a local authority, the chief executive of that authority, and includes:
 - I. in relation to an establishment which is a factory, the occupier of the factory,
 - II. where a person has been named as a manager of the factory
 - III. in relation to any other establishment, the person who, or the authority which has ultimate control over the affairs or the establishment and where the said affairs are entrusted to a manager or managing director, such manager or managing director; contractor and legal representative of a deceased employer.
 - **Employee** means any person other than an apprentice engaged under Apprentices Act, 1961 employed by an industrial establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union.
 - **Worker** means any person except an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied and includes working journalists, and includes any such person who has been, dismissed, discharged or retrenched or otherwise terminated in connection with or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:
 - I. who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957
 - II. who is employed in the police service or as an officer or other employee of a prison; or
 - III. who is employed mainly in a managerial or administrative capacity
 - IV. who is employed in a supervisory capacity drawing wage of exceeding eighteen thousand rupees (INR 18,000) per month or an amount as may be notified by the Central Government from time to time.
 - **Trade Union** means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workers and employers or between workers and workers, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions.
 - **Retrenchment** means termination by the employer of the service of a worker for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include:
 - I. voluntary retirement of the worker
 - II. retirement of the worker on reaching the age of superannuation
 - III. termination of the service of the worker as a result of the non-renewal of the contract of employment between the employer.
 - **Standing orders** means orders relating to matters set-out in the First Schedule.
- ### REGISTRATION OF TRADE UNION
- Any seven or more members of a trade union by subscribing to their names, apply for registration to the Authority according to Rules of the Trade Union.
 - At least ten percent of the workers or 100 workers, whichever is less, must be the members of the Trade Union on the date of making an application for registration.
 - Registered Trade Union shall continue to have at least ten percent of the workers or one hundred workers, whichever is less.
 - If the name of the Trade Union proposed to be registered is identical with an existing registered Trade Union, alteration of the name is required as asked by the Registrar of Trade Union.
 - Registered Trade Union shall be a body incorporate by the registered name, having a common seal and perpetual succession with the power to hold property.
- ### CONSTITUTION OF WORK COMMITTEE
- Industrial Establishment having or employed 100 or more workers during a period of 12 months, may be required to constitute a Work Committee to promote protective measures for securing and preserving sensible relations between the employer and workers.
- ### RECOGNITION OF NEGOTIATING TRADE UNION
- For a Registered trade union, there shall be a negotiating union or council to negotiate with the employer of the Industrial Establishment.
 - If only one Trade Union of workers registered in an industrial establishment then the employer of such industrial establishment shall recognize such Trade Union as the sole negotiating union of the workers.
 - If more than one Trade Union of registered workers in an Industrial Establishment then at least fifty-one percent or more of workers on the muster roll of that Industrial Establishment will be recognized as the sole negotiating union by the employer.
- ### GRIEVANCE REDRESSAL COMMITTEE
- Industrial Establishment having 20 or more workers shall constitute one or more Grievance Redressal Committees with the maximum 10 members for resolution of disputes arising out of individual grievances.

STANDING ORDERS

Industrial Establishment having or employed 300 or more workers on any day of during the period of 12 months, must prepare the standing orders on the following matters:

- Classification of workers
- Manner of intimating to workers for hours of work holidays, pay-days and wage rates
- Shift Working
- Attendance
- Conditions and procedure of leave and holidays
- Requirement to enter premises by certain gates, and liability to search.

STRIKES AND LOCK-OUTS

Every person employed in an Industrial Establishment is prohibited for strikes and lock-out, in breach of contract:

- without giving 60 days advance notice of strikes and lock-out to the employer
- within fourteen days of giving such notice; or
- before the expiry of the date of strikes and lock-out specified in any such notice; or
- during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings; or
- during the pendency of arbitration proceedings before an arbitrator & 60 days after conclusion of such proceedings

CHANGE IN THE CONDITIONS OF SERVICE

The employer is required to send a notice of change in the conditions of service in the following matters, to the workers being affected:

- wages, compensatory and other allowances
- contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of workers under any law for the time being in force
- hours of work and rest intervals
- leave with wages and holidays
- starting, alteration, or ending of shift operating otherwise than in accordance with standing orders
- classification by grades
- withdrawal of any customary concession or privilege or modification in usage
- introduction of recent provisions for discipline, or alteration of existing rules, except in so far as they are provided in standing orders
- rationalization, standardization, or improvement of plant or technique that is likely to lead to retrenchment of workers any increase or reduction in the no of persons employed or to be employed in any occupation or process or department or shift, not occasioned by circumstances over which the employer has no control.

RETRENCHMENT

- Provides procedures for the retrenchment of workers and the re-employment of the retrenched worker.
- For the retrenchment, the employer must either give three months' notice or pay the retrenched worker in lieu of the notice period

- Where any worker is retrenched and the employer proposes to take into his employment any person within one year of such retrenchment, an opportunity will be given to the retrenched workers who are citizens of India to offer themselves for re-employment.

LAY-OFF

Lay-off is the inability of an employer from giving employment to a worker due to multiple factors such as shortage of coal, power, or breakdown of machinery.

Non-seasonal industrial establishment (i.e. mines, factories, and plantations) with 50 to 300 workers is required to:

- pay 50% of basic wages and dearness allowance to a worker who has been laid off
- give one month's notice or wages for the notice period to the retrenched worker.
- non-seasonal industrial establishments with at least 300 workers is required to take prior approval from central or state government before lay-off, retrenchment or closure
- prior approval before lay-off, retrenchment or closure is required by the non-seasonal Industrial Establishments with at least 300 workers, from central or state government.

CLOSURE

- Employer intending closure of an Industrial Establishment is required to serve 60 days advance notice to the Government.
- Provision for compensation in case of Closure to those workers who are in a continuous period of service not less than one year.

EXEMPTIONS

The Code provides that the central or state government may exempt any new establishment or a class of new establishment from all or any provisions of the Code in the public interest.

KEY HIGHLIGHTS

- *Gratuity for Fixed Term Employee*
- *Statutory Benefits like ESI, PF, Bonus, Wages for Fixed term Employee*
- *Definitions modified*
- *14 days' advance notice before strike by Trade Union*
- *Increased threshold for standing order from 100 to 300 workers*
- *Introduced Dispute Resolution Tribunal*
- *Setting up a Re-skilled Fund for Workers*
- *Hiring and Firing Provisions*

COMPARATIVE CHART - EARLIER VS NEW PROVISIONS

#	EARLIER PROVISIONS	NEW PROVISIONS
1	<p>Definitions</p> <p>i. Employee. Fixed-term employment was not defined in any of the Act</p> <p>ii. Changes in definitions of Strike, wages, Industrial Dispute, Lay off</p> <p>iii. Workman was defined in the Industrial Dispute Act</p>	<p>i. New Definition of Employee, fixed term employment introduced</p> <p>ii. Definition of Strike has been amended to mass casual leave by 50% or more workers on a given day, while the definition of Wages kept aligned with other Labour code</p> <p>iii. Workman now renamed as the worker</p>
2	Sec-9.C of the Industrial Dispute Act, the workman need not raise its grievance to the committee before moving to a conciliation officer	Grievance Redressal Committee is mandate under Industrial Relations Code, 2020
3	No provision for "Negotiating Union"	Recognition of "Negotiating Union" is mandatory
4	<p>Standing Orders</p> <p>i. Only the Industrial Establishments defined under the Industrial Establishment Standing Order Act required to formulate standing orders</p> <p>ii. Threshold for applicability of standing order was on having 100 or more workers</p>	<p>i. The code defines an Industrial Establishment as defined under the Payment of Wages Act, 1936</p> <p>ii. Therefore, unless specifically notified under the Payment of Wages Act, the provisions of the code do not apply to an industrial establishment, except railways, establishment of a contractor of an industrial establishment and factories</p> <p>iii. Threshold increased up to 300 workers</p>
5	No time limit mentioned for completing the disciplinary proceedings against the worker	Investigation and inquiry have to be completed within 90 days from the date of suspension of a worker
6	Resolution of Industrial dispute use to be done by only one member Tribunal under Industrial Dispute Act	The mechanism for the resolution of industrial disputes introduced under the Industrial Relations Code Now the Industrial tribunal will consist of two members out of whom one shall be a judicial member and the other will be an administrative member
7	Prior Notice condition was only applicable to public utility service industries	14 days prior notice before strike mandated for all industrial establishments
8	No concept for worker re-skilling fund	Chapter XI introduced around worker re-skilling fund. According to the provision, the employer will be required to deposit an amount equal to fifteen days last drawn wages of every retrenched worker
9	No provision existed for Fixed-term Employment. Employers often enter into a contract with employees for the short term, but the same was not regulated	Fixed-term Employment Introduced, which refers to workers employed for a fixed duration based on a contract signed between the worker and employer
10	Penalties: For failure to certify standing orders or the modifications to the same and comply with the finally certified standing orders, fine which may extend to five thousand rupees, and in the case of a continuing offence with a further fine which may extend to INR 200 for every day after the first during which the offence continues.	<p>Penalties are more stringent now.</p> <ul style="list-style-type: none"> • Up to INR 2,00,000. • In case of non-certification of standing orders, an additional fine of INR 2,000 per day during which the contravention continues. • In subsequent contravention of the finally certified standing orders, fine up to INR 4,00,000 and imprisonment for a term up to 3 months, or both



MONIKA TAPARIA

- LLB, LLM, 5+ years experience;
- Expert in Establishment, Industrial, EHS, Trade Mark & IPR Laws
- Sr Regulatory Compliance Associate

ABOUT US

We offer RegTech & Lextech solutions for Enterprises, Audit, Compliance & Legal Professionals globally.

- Our decade of experience in creating Global Regulatory Intelligence and understanding real-life challenges of managing them have helped us create innovative, best in class solutions that are scalable & easy to implement.
- Our solutions integrate Regulatory Intelligence across laws for 70+ countries with technology, making it easy for users to understand compliance obligations and be informed of the Regulatory changes.
- Our Legal Network comprises 1000's of legal experts from 100's of Legal, CPA & Consulting Firms across 70+ countries having domain and territory expertise across areas of law.
- Our Reverse Outsourcing model of engaging legal experts for multi-country roll-outs helps reducing time, cost and efforts for such implementations.

OUR SOLUTION PORTFOLIO

ENTERPRISE SOLUTIONS

- Global Compliance Management Solution
- Legal Matter Management Solution
- Risk & Controls Management Solution

PROFESSIONAL SOLUTIONS

- Compliance Audit Management Solution
- Compliance Service Management Solution
- Case and Litigation Management Solution

OUR LOCATIONS



DELHI / NCR

CORPORATE OFFICE: 865-A, Tower - B1, Spaze I-Tech Park | Sector 49, Gurgaon - 122002



JAIPUR

KNOWLEDGE CENTRE: 32, Gopal Tower, Dadu Marg, GopalBari, Jaipur - 302001



MUMBAI

WeWork Chromium, JVLR, Opp. L&T Business Park, Andheri, Mumbai - 400076



AHMEDABAD

A2/512, Palladium Complex, Corporate Road, Prahladnagar, Ahmedabad, Gujarat - 380015

PARTNER LOCATIONS: BENGALURU, CHENNAI, HYDERABAD, PUNE, TANZANIA

GET IN TOUCH WITH US

+91-9560-83-4141 | info@lawrbit.com | www.lawrbit.com

Copyright © 2020 Lawrbit Lextech India Private Limited, all rights reserved. Lawrbit makes every effort to use reliable and comprehensive information, but Lawrbit does not represent that the contents of the report are accurate or complete. This document has been prepared without regard to the objectives or opinions of those who may receive it. Opinions expressed herein are entirely those of author(s) & the document is being furnished to you for your information only.

Lawrbit is registered in India having Corporate Identity Number or CIN : U74995RJ2018PTC062060.

FOLLOW US     